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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DANIEL SOPER,

Defendant and Appellant.

D047875

(Super. Ct. No. SCN193073)

ORDER DENYING REHEARING
AND MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

The People's petition for rehearing is denied.

It is ordered that the opinion filed herein on April 10, 2007, is modified as follows:

1. On Page 13, at the end of the second paragraph after the citation "*Id.* at p. 1315)," the following sentence is added:

We consider the record before the trial court at the time of the motion. (*People v. Valdez* (2004) 32 Cal.4th 73, 120.)

2. On page 20, in the first paragraph, line 2, the words "for the jury" are deleted.

3. On page 20, in the first paragraph, line 3, the words "at trial" are replaced with the words "in this case."

4. On page 20, in the last sentence of the first paragraph, the word "entire" is replaced with "primary," and the words "at trial" are deleted.

There is no change in the judgment.

McCONNELL, P. J.

Copies to: All parties